No. 97-849

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In The

Supreme Court of the United States

October Term, 1997

INEZ BROWN CROUCH; RONALD S. GARMON; RONALD H. MIDDLETON, SR.; JOHN C. MIZZELL; JOAN M. SOOY; ANN V. PADGETT; WILLIAM C. WILDER; JERRY LEE RICHARDSON; PARRIS L. WILLIAMS; JOHN DOE, an individual affected by the re-zoning; TOWN OF JAMES ISLAND,

Petitioners,

vs.

SECRETARY OF STATE, in his official capacity,

Respondent,

-and-

CITY OF CHARLESTON; ROBERT B. KIZER,

Parties in Interest.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

The Respondent, Secretary of State, in his official capacity, contends that the only question presented is properly stated as follows:

I. Were the lower courts correct in dismissing this action for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine?

ARGUMENT

This appeal is nothing more than a direct appeal or collateral attack of an issue of state law that has been decided by the South Carolina Supreme Court. A federal court has no authority to exercise appellate jurisdiction over, nor may it overrule on collateral attack, the highest appellate court of a state. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303 (1983); *Atlantic Coastline R. Co. v. Brotherhood of Local Engineers*, 398 U.S. 281, 90 S. Ct. 1739 (1970); and *Rooker v. Fidelity Trust Co.*, 263 U.S. 403, 44 S. Ct. 149 (1923).

The *Rooker-Feldman* doctrine applies to claims for both injunctive and declaratory relief, and regardless of whether or not the state court action is final or proceedings in the state court are still ongoing. *Keen Corp. v. Cass*, 908 F.2d 293 (8th Cir. 1990). The purpose of the doctrine is to prevent precisely the type of "end run" that Plaintiffs have chosen here. If plaintiffs were unhappy with the decision of the South Carolina Supreme Court, their only option was to appeal to the United States Supreme Court. Petitioners did and were denied. *Glaze v. Grooms*, 324 S.C. 249, 478 S.E. 2d 841 (1996), *cert. denied*, 117 S. Ct. 1845 (1997).

Petitioners are asking the federal courts to tell an agency of the executive branch of state government not to follow the interpretation of state law by the South Carolina Supreme Court. This is nothing more than a craftily-drafted distinction with no substance. In *Stern v. Nix*, 840 F.2d 208 (3rd Cir.), *cert. denied*, 488 U.S. 326, 109 S. Ct. 77 (1988), the Third Circuit undid a federal plaintiff's complaint by stating that his general challenge to the constitutionality of a state court rule was

> simply a skillful attempt to mask the true purpose of the action, which essentially [was] to reverse the

> judicial decision of the Supreme Court of Pennsylvania, in contravention of Rooker-Feldman.

Id. at 212. Likewise, Appellants are trying to insulate themselves from a direct appeal of the South Carolina Supreme Court by cleverly inserting the Secretary of State ("the Secretary") in the middle of an attempt to hide their true intent. The South Carolina Supreme Court has already ruled that the incorporation of James Island was invalid; thus, the Town never legally existed.

Petitioners argue that

> [A]n award of the relief sought by these Appellants would leave the *Glaze* decision intact; it would simply prevent the State from implementing the decision in this case.

(Petition at 10-11). This is a distinction without substance. What Petitioners are really asking is to leave the *Glaze* decision as binding, but do not apply it to them. No matter what one calls it, this is nothing more than a direct appeal or collateral attack of the decision of the South Carolina Supreme Court.

The United States Court of Appeals for the Fourth Circuit reviewed the district court's dismissal for lack of subject matter jurisdiction *de novo*. (App. 4). Both courts agreed that the *Rooker-Feldman* doctrine barred the federal court from reviewing the decision of the South Carolina Supreme Court.

Respondent contends that the opinion of the Fourth Circuit, (App. 1-10), clearly articulates the reasons for denying Petitioner's writ. Petitioners have failed to show why this Court should grant the writ.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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